

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Application of New Cingular Wireless PCS, LLC |) | WT Docket No. 16-75 |
| and Qualcomm Incorporated |) | |
| |) | |
| For Consent To Assign License |) | |

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 2016**Released: December 21, 2016**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we consider the application of AT&T and Qualcomm for Commission consent to the assignment to AT&T from Qualcomm of one Lower 700 MHz B Block license covering one local market area in New Jersey. The Commission determined in the *Mobile Spectrum Holdings Report and Order* that increased aggregation of below-1-GHz spectrum would be treated as an “enhanced factor” under its case-by-case review of license transfers if post-transaction the acquiring entity would hold approximately one-third or more of the suitable and available spectrum below 1 GHz.¹ The *Mobile Spectrum Holdings Report and Order* also requires that where the entity acquiring below-1-GHz spectrum already holds approximately one-third or more of the below-1-GHz spectrum in a particular market, the demonstration of the public interest benefits of the proposed transaction would need to clearly outweigh the potential public interest harms, irrespective of other factors.²

2. AT&T is already attributed with more than one-third of below-1-GHz spectrum in New Jersey 1 – Hunterdon and, as a result of this proposed transaction, it would further increase its attributable low-band spectrum holdings to 61 megahertz. After carefully evaluating the likely competitive effects of AT&T’s increased aggregation of below-1-GHz spectrum in this one local market area, we find that the likelihood of competitive harm is low. Further, we find that some public interest benefits are likely to be realized, such as increased throughput, a higher quality network, and a better consumer experience resulting from the accelerated deployment of a more robust LTE network in this local market area. Based on the record before us and our public interest review, we find that the proposed assignment of this license would serve the public interest, convenience, and necessity, and therefore we consent to the proposed assignment.

II. BACKGROUND AND PUBLIC INTEREST FRAMEWORK

3. *Description of the Applicants.* New Cingular Wireless PCS, LLC, is an indirect wholly-owned subsidiary of AT&T Inc. (together with New Cingular Wireless PCS, LLC, AT&T), which is headquartered in Dallas, Texas and is a communications holding company that ranks among the leading

¹ *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6238-40, paras. 282-88 (2014) (*Mobile Spectrum Holdings Report and Order*), *recon. denied*, Order on Reconsideration, 30 FCC Rcd 8635 (2015).

² *Mobile Spectrum Holdings Report and Order*, 29 FCC at 6240, para. 287.

providers of telecommunications services in the United States.³ Qualcomm Incorporated (Qualcomm, and together with AT&T, the Applicants), headquartered in San Diego, California, is a leader in the development and commercialization of next generation mobile broadband technologies.⁴

4. *Description of the Transaction.* On February 17, 2016, AT&T and Qualcomm filed an Application pursuant to Section 310(d) of the Communications Act of 1934, as amended (the Act),⁵ seeking Commission consent to assign one Lower 700 MHz B Block license to AT&T.⁶ Through this proposed transaction, AT&T would acquire 12 megahertz of low-band spectrum from Qualcomm in the single-county New Jersey 1 – Hunterdon Cellular Market Area (CMA 550).⁷ AT&T is already attributed with 49 megahertz of below-1-GHz spectrum and, as a result of the proposed transaction, would be attributed with 61 megahertz of below-1-GHz spectrum in this local market area.⁸ Post-transaction, AT&T would hold 111 megahertz of spectrum in total.

5. *Standard of Review.* Pursuant to Section 310(d) of the Act,⁹ we must determine whether the Applicants have demonstrated that the proposed assignment of licenses and authorizations would serve the public interest, convenience, and necessity.¹⁰ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,¹¹ other applicable

³ AT&T Inc., 2015 SEC Form 10-K, at 1 (filed Feb. 18, 2016), http://www.sec.gov/Archives/edgar/data/732717/000073271716000147/ye15_10k.htm.

⁴ Qualcomm Incorporated, 2015 SEC Form 10-K, at 1 (filed Nov. 4, 2015), <https://www.sec.gov/Archives/edgar/data/804328/000123445215000271/qcom10-k2015.htm>.

⁵ 47 U.S.C. § 310(d).

⁶ Application To Assign License from Qualcomm Incorporated to New Cingular Wireless PCS, LLC, ULS File No. 0007138577 (filed Feb. 17, 2016) (Application), Exhibit 1—Description of Transaction and Public Interest Statement at 1 (Public Interest Statement).

⁷ *New Cingular Wireless PCS, LLC and Qualcomm Incorporated Seek FCC Consent to the Assignment of a Lower 700 MHz B Block License in New Jersey*, Public Notice, 31 FCC Rcd 3694 (WTB April 18, 2016) (*Accepted for Filing Public Notice*); Application, Exhibit 3—Spectrum Aggregation.

⁸ *Accepted for Filing Public Notice* at 1-2; Application, Exhibit 3—Spectrum Aggregation. As set out in the docket, the Bureau accepted the Application for filing and established a pleading cycle, released a public notice announcing that Numbering Resource Utilization and Forecast (NRUF) reports and local number portability (LNP) data would be placed into the record and adopted the associated protective order, adopted a protective order covering the submission of confidential and highly confidential information, and sent the Applicants information requests seeking further specific information relating to the proposed transaction.

⁹ 47 U.S.C. § 310(d).

¹⁰ See, e.g., *Applications of SprintCom, Inc., Shenandoah Personal Communications, LLC, and NTELOS Holdings Corp. for Consent To Assign Licenses and Spectrum Lease Authorizations and To Transfer Control of Spectrum Lease Authorizations and an International Section 214 Authorization*, Memorandum Opinion and Order, 31 FCC Rcd 3631, 3634, para. 6 (WTB/IB 2016) (*Sprint-Shentel-NTELOS Order*); *Application of AT&T Mobility Spectrum LLC and Club 42CM Limited Partnership for Consent To Assign Licenses*, Memorandum Opinion and Order, 30 FCC Rcd 13055, 13057, 13062, 13072-73, 13077-78, 13078-79, paras. 7, 15, 37, 48, 51 (2015) (*AT&T-Club 42 Order*); *Applications of AT&T Inc., E.N.M.R Telephone Cooperative, Plateau Telecommunications, Inc., New Mexico RSA 4 East Limited Partnership, and Texas RSA 3 Limited Partnership for Consent To Assign Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 5107, 5111, para. 8 (2015) (*AT&T-Plateau Wireless Order*); *Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Co., LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2741-42, para. 13 (WTB, IB 2014) (*AT&T-Leap Order*).

¹¹ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under Section 308 of the Act. 47 U.S.C. §§ 308, 310(d). See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6 & n.15; *AT&T-Club 42 Order*, 30 FCC Rcd at 13059, para. 9 & n.35; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8 & n.27; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13 & n.45.

statutes, and the Commission's rules.¹² If the proposed transaction does not violate a statute or rule, we next consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹³ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁴ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁵

6. The Commission has fully discussed the contours of the required public interest determination in several orders,¹⁶ which we follow here. In general, the competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.¹⁷ The Commission and the Department of Justice each have independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of Commission licenses, but the Commission's competitive analysis under the public interest standard is somewhat broader.¹⁸ The Commission's public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.¹⁹ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.²⁰

¹² See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Club 42 Order*, 30 FCC Rcd at 13059, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹³ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Club 42 Order*, 30 FCC Rcd at 13059, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Club 42 Order*, 30 FCC Rcd at 13059-60, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634, para. 6; *AT&T-Club 42 Order*, 30 FCC Rcd at 13060, para. 9; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, para. 8; *AT&T-Leap Order*, 29 FCC Rcd at 2741-42, para. 13.

¹⁶ See, e.g., *Applications of AT&T and DIRECTV for Consent To Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 29 FCC Rcd 9131, 9139-41, paras. 18-22 (2015); *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. for Consent to Assign Licenses to the Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433, 10442-44, paras. 23-27 (2013) (*Alaska Wireless Order*).

¹⁷ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *AT&T-Club 42 Order*, 30 FCC Rcd at 13060, para. 10; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

¹⁸ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *AT&T-Club 42 Order*, 30 FCC Rcd at 13060, para. 10; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2742-43, para. 15.

¹⁹ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *AT&T-Club 42 Order*, 30 FCC Rcd at 13060, para. 10; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743-44, para. 16.

²⁰ 47 U.S.C. § 309(e); see also, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3634-35, para. 7; *AT&T-Club 42 Order*, 30 FCC Rcd at 13060, para. 10; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111-12, para. 9; *AT&T-Leap Order*, 29 FCC Rcd at 2743, para. 15; *Application of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002).

7. *Qualifications of the Applicants.* As a threshold matter, the Commission must determine whether the applicants to a proposed transaction meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.²¹ We note that no parties have raised issues with respect to the basic qualifications of AT&T or Qualcomm, and, in addition, AT&T previously and repeatedly has been found qualified to hold Commission licenses.²² We therefore find there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Act and our rules, regulations, and policies, of AT&T or Qualcomm.²³

III. POTENTIAL PUBLIC INTEREST HARMS

8. *Competitive Overview.* In its examination of a proposed transaction, the Commission evaluates the potential public interest harms and undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.²⁴ In the past, the Commission has used a two-part screen to help identify those markets that provide particular reason for further competitive analysis, but has not limited its consideration of potential competitive harms solely to markets identified by its screen if it encounters other factors that may bear on the public interest inquiry.²⁵ In the *Mobile Spectrum Holdings Report and Order*, the Commission found that it is in the public interest to continue to use its spectrum screen and case-by-case review²⁶ and, in addition, to require that any increase in spectrum holdings of below 1 GHz be treated as an "enhanced factor" in its review if post-transaction the acquiring entity would hold approximately one-third or more of such spectrum.²⁷

9. The Commission stated that it anticipated "that any entity that would end up with more than one third of below-1-GHz spectrum as a result of a proposed transaction would facilitate our case-by-case review with a detailed demonstration regarding why the public interest benefits outweigh harms."²⁸ The Commission further stated, however, that when the other factors ordinarily considered indicate a low potential for competitive or other public interest harm, the acquisition of below-1-GHz spectrum resulting in holdings of approximately one-third or more would not preclude a conclusion that a proposed transaction, on balance, furthers the public interest.²⁹ The Commission also set out a heightened standard of review for cases in which the proposed transaction would result in an entity that already holds approximately one-third or more of below-1-GHz spectrum in a market acquiring additional below-1-GHz spectrum in that market, especially with regard to paired low-band spectrum. In these cases, the Commission stated that the required demonstration of the potential public interest benefits of the

²¹ 47 U.S.C. § 310(d); 47 CFR § 1.948; *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 8; *AT&T Plateau Wireless Order*, 30 FCC Rcd at 5112, para. 10; *AT&T-Leap Order*, 29 FCC Rcd at 2744, para. 17.

²² See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13060-61, para. 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5112-13, para. 11; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 19.

²³ 47 U.S.C. § 310(d); 47 CFR § 1.948.

²⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3635, para. 9; *AT&T-Club 42 Order*, 30 FCC Rcd at 13061, para. 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; *AT&T-Leap Order*, 29 FCC Rcd at 2745, para. 20.

²⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636, para. 9; *AT&T-Club 42 Order*, 30 FCC Rcd at 13061, para. 13; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 12; see also *AT&T-Leap Order*, 29 FCC Rcd at 2752, 2753, 2755-56, paras. 39, 41, 47.

²⁶ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6223-24, para. 231.

²⁷ *Id.* at 6240, paras. 286-88; see also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13061, para. 14; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113, para. 13.

²⁸ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 286.

²⁹ *Id.*

proposed transaction would need to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.³⁰

10. The Commission stated in the *Mobile Spectrum Holdings Report and Order* that low-band spectrum is less costly to deploy and provides higher quality coverage than higher-band spectrum,³¹ and that the two leading nationwide service providers hold most of the low-band spectrum available today.³² The Commission found that if they were to acquire all, or substantially all, of the remaining low-band spectrum, they would benefit, independently of any deployment, to the extent that rival service providers are denied its use.³³ As the Commission found, without access to this low-band spectrum, rival service providers that may lack a mix of low-band and higher-band spectrum would be less able to provide a robust competitive alternative, and may not be able to quickly expand coverage or provide new services.³⁴ We consider below whether there would be an increased likelihood as a result of the proposed transaction that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market, and whether rivals' costs would be increased to the extent that they would be less likely to be able to compete robustly.³⁵

A. Market Definitions

11. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,³⁶ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

12. *Product and Geographic Markets.* Consistent with recent transaction orders, we find that the relevant product market is a combined "mobile telephony/broadband services" product market that comprises mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).³⁷ In addition, we find that the relevant geographic market is local.³⁸ The Applicants are seeking Commission consent to the proposed assignment of 12 megahertz of low-band spectrum that covers a single-county CMA, accounting for well under one percent of the population of the United States.

13. *Input Market for Spectrum and Market Participants.* The Commission has determined in

³⁰ *Id.* at 6240, para. 287; *see also AT&T-Club 42 Order*, 30 FCC Rcd 13055, 13057, 13062, 13072-73, 13077-78, 13078-79, paras. 7, 15, 37, 48, 51; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5111, 5113, 5114, 5123, 5130, paras. 8 & n.31, 13, 15, 36 & n.114, 56.

³¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164, para. 60.

³² *Id.* at 6156-57, 6162, 6164, paras. 46, 58, 60.

³³ *Id.* at 6164, para. 60.

³⁴ *Id.* at 6164-65, paras. 60-61; *see also, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13062-3, para. 16; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5113-14, para. 14.

³⁵ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13073, para. 37; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6154, 6164-65, 6168, paras. 41, 61, 68-69.

³⁶ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13063, para. 17; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115, para. 17; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 22.

³⁷ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13063, para. 18; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5115-16, para. 18; *AT&T-Leap Order*, 29 FCC Rcd at 2746, para. 23.

³⁸ The Commission has found that the relevant geographic markets for certain wireless transactions generally are local, but has held that a transaction's competitive effects should also be evaluated at the national level where a transaction exhibits certain national characteristics that provide cause for concern. *See, e.g., Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3636, para. 12; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5116, para. 19; *AT&T-Leap Order*, 29 FCC Rcd at 2748, para. 27.

prior orders that the following bands, or portions thereof, should be included in the input market: cellular, broadband PCS, SMR, 700 MHz, AWS-1 and BRS on a market-by-market basis, WCS, the 600 MHz band (at the conclusion of the Incentive Auction), AWS-4, H Block, the majority of the EBS spectrum, and the AWS-3 band (on a market-by-market basis as it becomes “available”).³⁹ The *Sprint-Shentel-NTELOS Order* found that the AWS-3 1695-1710 MHz band satisfies the standard adopted by the Commission in the *Mobile Spectrum Holdings Report and Order* and “should now be considered available, as well as suitable, on a nationwide basis.”⁴⁰ Therefore, the total amount of spectrum suitable and available for the provision of mobile telephony/broadband services is now 595.5 megahertz, approximately one-third of which is 199 megahertz.⁴¹ We consider facilities-based entities providing mobile telephony/broadband services using these spectrum bands as just described to be market participants.⁴²

B. Competitive Effects of the Proposed Transaction

14. *Initial Review.* As discussed above, to help identify those local markets in which competitive concerns are more likely, initially we apply a two-part screen, and if the acquiring entity would increase its below-1-GHz spectrum holdings to hold approximately one-third or more of such spectrum post-transaction, we apply enhanced factor review.⁴³ The first part of the screen is based on the size of the post-transaction Herfindahl-Hirschman Index (HHI) and the change in the HHI.⁴⁴ The second part of the screen, which is applied on a county-by-county basis, identifies local markets where an entity would hold approximately one-third or more of the total spectrum suitable and available for the provision of mobile telephony/broadband services, post-transaction.⁴⁵ In instances where an applicant is acquiring spectrum below 1 GHz, we also carefully examine the possible competitive effects resulting from an

³⁹ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637, para. 13; *AT&T-Club 42 Order*, 30 FCC Rcd at 13064-65, para. 21; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; see also *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6169, para. 70.

⁴⁰ *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-38, para. 15.

⁴¹ *Id.*

⁴² See, e.g., *id.* at 3638, para. 16; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23; *AT&T-Leap Order*, 29 FCC Rcd at 2751, para. 35. The Commission has assessed the competitive effect of MVNOs and resellers in prior transactions, but noted that it will exclude MVNOs and resellers from consideration when computing initial concentration measures. See, e.g., *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5117, para. 23 & n.78; *AT&T-Leap Order*, 29 FCC Rcd at 2752, para. 37. Further, as AWS-3 (1755-1780 MHz and 2155-2180 MHz on a market-by-market basis) and 600 MHz spectrum become available, we will also consider facilities-based entities providing mobile telephony/broadband services using that spectrum to be market participants. *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638, para. 16.

⁴³ See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 286-88. The current total amount of below-1-GHz spectrum that is suitable and available is 134 megahertz, approximately one-third of which is 45 megahertz. See *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6156-57, 6240, paras. 46, 286-88. As with our application of the initial total spectrum screen, we evaluate increases in below-1-GHz spectrum concentration on a county-by-county basis. See, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065, para. 23 & n.82; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, 5123, paras. 31, 35.

⁴⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17; *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24; *AT&T-Leap Order*, 29 FCC Rcd at 2753, para. 41 & n.140.

⁴⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3638-39, para. 17; *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

increase in below-1-GHz spectrum holdings that would be above the threshold identified in the *Mobile Spectrum Holdings Report and Order*.⁴⁶

15. As the instant transaction does not result in the acquisition of wireless business units and customers, we do not apply the initial HHI screen. The market does not trigger the revised total spectrum screen,⁴⁷ but in our review of the below-1-GHz holdings, we find that AT&T is already attributed with more than 45 megahertz of low-band spectrum in New Jersey 1 – Hunterdon, and would further increase its low-band spectrum holdings to 61 megahertz as a result of the proposed transaction.⁴⁸ New Jersey 1 – Hunterdon is therefore subject to enhanced factor review as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*.⁴⁹

16. *Record.* The Applicants contend that the license transfer would have no adverse competitive effects because the proposed transaction would not cause an aggregation of spectrum that would pose an anticompetitive risk.⁵⁰ AT&T maintains that other nationwide service providers in New Jersey 1 – Hunterdon have sufficient spectrum assets, including low-band spectrum, to compete in this market.⁵¹ AT&T asserts that other nationwide service providers have deployed substantial LTE networks in this market.⁵² The Applicants assert that the proposed transaction would enable AT&T to be a more effective competitor.⁵³ AT&T argues that the license transfer would make the company's spectrum holdings more consistent with surrounding markets where AT&T already holds the Lower B and C Blocks.⁵⁴ No petitions to deny or comments were received.

17. *Market-Specific Review.* Generally, in undertaking our analysis, we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁵⁵

18. In our competitive evaluation, we first note that New Jersey 1 – Hunterdon is a non-rural

⁴⁶ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6233, 6240, paras. 267, 286-88; see also, e.g., *AT&T-Club 42 Order*, 30 FCC Rcd at 13065-66, para. 23; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5118, para. 24.

⁴⁷ See *supra* para. 13; see also *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3637-39, paras. 15, 17 & n.52.

⁴⁸ Application, Exhibit 3—Spectrum Aggregation; *Accepted for Filing Public Notice* at 1-2.

⁴⁹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287; see also *AT&T-Club 42 Order*, 30 FCC Rcd at 13066, para. 24.

⁵⁰ Public Interest Statement at 4.

⁵¹ Response of AT&T to the General Information Request Dated April 18, 2016, WT Docket 16-75, at 13-15 (May 2, 2016) (AT&T Information Request Response).

⁵² *Id.* at 16.

⁵³ Public Interest Statement at 4-5.

⁵⁴ AT&T Information Request Response at 17-18.

⁵⁵ We derive market shares and HHIs from our analysis of data compiled in our December 2015 NRUF and LNP database, network coverage from January 2016 Mosaik data and 2010 U.S. Census data, and spectrum holdings from our licensing databases and the Application. We also utilized and analyzed additional data as provided by the Applicants through our information requests. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3641, para. 21 & n.66; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5120, para. 29 & n.98.

market. It contains approximately 128,000 people with a population density of 299 people per square mile.⁵⁶ In this non-rural market, AT&T already holds more than 45 megahertz of the currently suitable and available below-1-GHz spectrum and would acquire an additional 12 megahertz of low-band spectrum to hold 61 megahertz post-transaction. More specifically, AT&T already holds 25 megahertz of cellular spectrum, 12 megahertz of paired Lower 700 MHz C Block spectrum, and 12 megahertz of unpaired Lower 700 MHz D and E Block spectrum. As noted above, the proposed transaction is subject to enhanced factor review as set forth in paragraph 287 of the *Mobile Spectrum Holdings Report and Order*.⁵⁷ In these cases, the required demonstration of the public interest benefits needs to clearly outweigh the potential public interest harms associated with such additional concentration of below-1-GHz spectrum, irrespective of other factors.⁵⁸

19. In non-rural New Jersey 1 – Hunterdon, in addition to AT&T, the three other nationwide service providers all hold paired low-band spectrum post-transaction, totaling 73 megahertz.⁵⁹ Specifically, Verizon Wireless holds 47 megahertz (25 megahertz of cellular spectrum and 22 megahertz of Upper 700 MHz C Block spectrum), Sprint holds 14 megahertz of SMR spectrum, and T-Mobile holds 12 megahertz of Lower 700 MHz A Block spectrum. These three nationwide service providers therefore each have access in this particular market to paired low-band spectrum that would allow at least a 5×5 megahertz LTE deployment on below-1-GHz spectrum. Further, in this particular market, Verizon Wireless holds significantly more paired low-band spectrum, which will allow it to more effectively respond to any anti-competitive behavior on the part of AT&T. In addition, Sprint, T-Mobile and Verizon Wireless have access to spectrum above 1 GHz to combine with their low-band spectrum holdings for LTE deployment.⁶⁰ As the Commission has found, service providers that hold a mix of low- and high-band spectrum licenses have greater flexibility and are better able to optimize network costs for a given quality level.⁶¹ Further, the acquisition of this Lower 700 MHz B Block spectrum by AT&T is not likely to foreclose expansion into hitherto unserved geographic portions of the market because not only is the particular spectrum at issue unlikely to have been a means of expansion for rival service providers in this particular local market given the nature of their current spectrum portfolios, but the three other nationwide service providers already have significant geographic coverage—each currently covers close to 100 percent of the land area of this market with LTE.⁶² Overall, we find that the low-band spectrum holdings of the three other nationwide service providers in New Jersey 1 – Hunterdon would

⁵⁶ The population density is measured by the number of people per square mile using Census 2010 data. Rural markets are generally characterized by 100 people per square mile or less. *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19086-88, paras. 10-12 (2004).

⁵⁷ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287; see *supra* para. 15.

⁵⁸ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, para. 287; see also *AT&T-Club 42 Order*, 30 FCC Rcd at 13071, 13072-73, paras. 34, 37-38.

⁵⁹ According to December 2015 NRUF, three nationwide service providers, AT&T, T-Mobile, and Verizon Wireless, each have market shares of [REDACTED]% in New Jersey 1 – Hunterdon.

⁶⁰ In terms of their above 1 GHz spectrum holdings, AT&T holds 50 megahertz, Verizon Wireless holds 80 megahertz, Sprint holds 183.7 megahertz and T-Mobile holds 70 megahertz in New Jersey 1 – Hunterdon. In addition, DISH holds 65 megahertz of spectrum above 1 GHz in this market.

⁶¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6163-64, para. 59.

⁶² All four nationwide service providers have significant 3G and LTE population and land area coverage, covering well over 90% of the population, and at least approximately 90% of the land area. It has previously been found that coverage of 70% or more of the population and 50% or more of the land area is presumptively sufficient for a service provider to have a competitive presence in the market. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3643, para. 25 & n.77; *AT&T-Club 42 Order*, 30 FCC Rcd at 13071-72, para. 35 & n.141; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5121, para. 31 & n.102; *AT&T-Leap Order*, 29 FCC Rcd at 2770, para. 81 & n.279.

likely allow them to effectively respond to any anticompetitive behavior on the part of AT&T.⁶³ For these reasons, although AT&T would increase its low-band spectrum holdings from 49 megahertz to 61 megahertz post-transaction, we find that considering the acquisition of this 12 megahertz of low-band spectrum, irrespective of other factors, the potential public interest harms of such additional concentration of this particular spectrum in this particular market is low.

IV. POTENTIAL PUBLIC INTEREST BENEFITS

20. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.⁶⁴ Under Commission precedent, the Applicants bear the burden of demonstrating the potential public interest benefits of a proposed transaction.⁶⁵ The Commission applies several criteria in deciding whether a claimed benefit is cognizable. First, each claimed benefit must be transaction-specific.⁶⁶ Second, each claimed benefit must be verifiable.⁶⁷ Third, we calculate the magnitude of benefits net of the cost of achieving them and benefits must flow through to consumers, and not inure solely to the benefit of the company.⁶⁸ The Commission applies a “sliding scale approach” to evaluating benefit claims: Under this approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁶⁹ Conversely, where potential harms appear less likely and less substantial, we will accept a lesser showing to approve the proposed transaction.⁷⁰

21. *Record.* The Applicants assert, in their detailed demonstration of the claimed public interest benefits, that the proposed transaction would provide AT&T with additional below-1-GHz spectrum that would improve and enhance AT&T’s voice and data service offerings to the public.⁷¹ The Applicants assert that the spectrum to be assigned would complement AT&T’s existing spectrum holdings, allowing for a 10×10 megahertz LTE configuration providing greater spectral efficiency and consistently greater throughput.⁷² The Applicants contend that the acquisition of the Qualcomm license in

⁶³ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6164-65, paras. 60-61.

⁶⁴ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 39; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126, para. 43.

⁶⁵ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 86; see also *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 131.

⁶⁶ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶⁷ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶⁸ For example, we will more likely find marginal cost reductions to be cognizable than reductions in fixed cost because reductions in marginal cost are more likely to result in lower prices for consumers. See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3647-48, para. 34; *AT&T-Leap Order*, 29 FCC Rcd at 2793-94, para. 132; *Alaska Wireless Order*, 28 FCC Rcd at 10468, para. 87.

⁶⁹ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5126-27, para. 44; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40.

⁷⁰ See, e.g., *Sprint-Shentel-NTELOS Order*, 31 FCC Rcd at 3648, para. 35; *AT&T-Club 42 Order*, 30 FCC Rcd at 13074, para. 40; *AT&T-Leap Order*, 29 FCC Rcd at 2794, para. 131.

⁷¹ Public Interest Statement at 2; see also AT&T Information Request Response at 5-9.

⁷² Public Interest Statement at 3. AT&T states that it currently operates on a 10×10 megahertz configuration in New Jersey 1 – Hunterdon pursuant to a short-term spectrum manager leasing arrangement with Qualcomm, and since it expanded its Lower 700 MHz LTE carrier configuration in this market from 5×5 megahertz to 10×10 megahertz, [REDACTED]. AT&T Information Request Response at 5-6, 18; Notification of Spectrum Manager Spectrum Leasing Arrangement Between Qualcomm Incorporated and New Cingular Wireless PCS, LLC, ULS File No. 0007144716 (filed Feb. 19, 2016).

this market is necessary to maintain, enhance, and expand AT&T's mobile services in New Jersey 1 – Hunterdon.⁷³ AT&T argues that this transaction would make its spectrum holdings similar to those it holds in surrounding geographic markets, where it already holds spectrum in the Lower 700 MHz B and C blocks.⁷⁴ AT&T claims that having contiguous spectrum holdings would enable it to deploy LTE consistently among those markets, allowing for improved coverage and increased efficiency in market border areas because it would be able to manage interference more effectively.⁷⁵

22. *Evaluation.* We have reviewed the Applicants' asserted public interest benefits, as well as their detailed responses to our requests for additional information and documents regarding the potential benefits of AT&T acquiring, in particular, the below-1-GHz spectrum at issue in New Jersey 1 – Hunterdon. The record provides general support for the Applicants' contentions that the proposed transaction would likely result in some public interest benefits post-transaction in this market. Specifically, we anticipate that AT&T, through the acquisition of this Lower 700 MHz B Block spectrum, would likely be able to improve and enhance its LTE network. By adding this specific low-band spectrum to fill in the gap in its Lower 700 MHz spectrum holdings in the Northeast corridor between Boston and Washington D.C., AT&T potentially would be able to provide its consumers with consistently greater throughput.⁷⁶ As the Commission found in the *AT&T-Club 42 Order*, there are specific public interest benefits to the deployment of a 10×10 megahertz channel over two 5×5 megahertz channels.⁷⁷ Whatever the gains of spectral efficiency may be, a 10×10 megahertz channel provides double the peak user rate of two 5×5 megahertz channels, and requires only a single base station radio, which will simplify network operation.⁷⁸ Further, the deployment of a 10×10 megahertz radio channel instead of a single 5×5 megahertz radio channel allows AT&T to offer twice the throughput in the 700 MHz band.⁷⁹ As the Commission found in the *AT&T-Plateau Wireless Order* and the *AT&T-Club 42 Order*, consumers are likely to benefit from access to improved performance and a more robust network as a result of the instant transaction, resulting in a better customer experience.⁸⁰

V. BALANCING THE POTENTIAL BENEFITS AND THE POTENTIAL HARMS

23. The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms. We have reviewed the Applicants' initial public interest statement, as well as their responses to our requests for additional information and documents. In our competitive evaluation, we have carefully applied enhanced factor review, consistent with what was set out by the Commission in the *Mobile Spectrum Holdings Report and Order*.⁸¹ After carefully evaluating the potential competitive effects of AT&T's increased aggregation of below-1-GHz spectrum in New Jersey 1 – Hunterdon, a market in which AT&T currently is attributed

⁷³ AT&T Information Request Response at 17.

⁷⁴ *Id.* at 16-17; *see also* ATT-QUAL000059.

⁷⁵ AT&T Information Request Response at 16-17; *see also* ATT-QUAL000001-05; ATT-QUAL000070-71.

⁷⁶ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129, para. 53.

⁷⁷ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47.

⁷⁸ *See, e.g., id.*

⁷⁹ *See, e.g., id.*

⁸⁰ *See, e.g., AT&T-Club 42 Order*, 30 FCC Rcd at 13076-77, paras. 46-47; *AT&T-Plateau Wireless Order*, 30 FCC Rcd at 5129, para. 53. As we noted in the *AT&T-Club 42 Order*, recognizing the public interest benefits of a 10×10 megahertz channel does not undermine our conclusion that 10×10 megahertz blocks are not required for effective mobile broadband deployment. *AT&T-Club 42 Order*, 30 FCC Rcd at 13076, para. 46 & n.185; *see also Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6210, para. 190.

⁸¹ *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6240, paras. 286-87.

with more than one-third of the below-1-GHz spectrum, and in which it would further increase its low-band spectrum holdings to hold 61 megahertz of such spectrum post-transaction, we find it is unlikely that rivals' costs would be raised to any significant extent, or that market expansion or new entry would be foreclosed, irrespective of other factors. Thus, we find that the likelihood of competitive harm in New Jersey 1 – Hunterdon is low. In addition, we have reviewed the Applicants' claims regarding the benefits they allege would result if AT&T were permitted to acquire, in particular, this below-1-GHz spectrum, and we find that the record provides general support for the Applicants' claims that the proposed transaction likely would result in some public interest benefits. We emphasize that while we find these benefits weigh in favor of approving the specific transaction before us, they may not be sufficient to support the approval of future transactions. Based on the record before us and our competitive review, we find that the potential public interest benefits clearly outweigh any potential public interest harms. As a result, under our sliding scale approach, we find that consenting to the proposed assignment would serve the public interest, convenience, and necessity.

VI. ORDERING CLAUSES

24. ACCORDINGLY, having reviewed the Applications and the record in this proceeding, IT IS ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the application for assignment of one license held by Qualcomm Incorporated to New Cingular Wireless PCS, LLC, is GRANTED.

25. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 CFR § 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 CFR § 1.115, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

26. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Jon Wilkins
Chief
Wireless Telecommunications Bureau